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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,787

08/23/2006

Alan Gayne Emblin

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7590

06/22/2010

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EXAMINER

FONSECA, JESSIE T

ART UNIT

PAPER NUMBER

3633

MAIL DATE

DELIVERY MODE

06/22/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,787	<b>Applicant(s)</b> EMBLIN, ALAN GAYNE	
	<b>Examiner</b> JESSIE FONSECA	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 60-65, 67-74 and 76-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 69-73 and 77-80 is/are allowed.
- 6) ☐ Claim(s) 60-65, 67, 68, 74 and 76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/10/10 has been entered.

### ***Drawings***

The drawings are objected to because the outwardly extending tongues (16) shown in figure 1 are not proportional to the recess (15) to which they are received. As drawn, the tongues (16) are significantly smaller than the recess (15).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

Art Unit: 3633

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

Claims 60-65, 67-68, 74 and 76 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruff et al. (US 4,067,155).

With regard to claim 60: Ruff et al. discloses a stud (16) capable of use in panel form work for solid filled walls, the stud comprising:

a head (20) formed as a strip, the strip having a relatively broad flat surface (figs. 1 and 3-4) adapted to directly abut against and be bonded and/or fastened to an inner face of a panel facing sheet,

a pair of spaced, opposed flanges (22, 24) formed along and extending away from a central portion of the head (20), the flanges formed integrally with the head such that the flanges (22, 24) and a portion of the head (20) spanning between the flanges (22, 24) define a recess with inwardly directed teeth (figs. 1 and 3-4) capable engagement of a spacer element, and

Art Unit: 3633

each flange (22, 24) having an out-turned terminal lip (A), the out-turned terminal lips (A) defining a widening of the recess. Note [Dictionary.com](http://Dictionary.com) defines a *lip* as “any edge or rim.” Accordingly, the lip (A) of Ruff et al. is the edge of the flange, which shows the lip turning (angled) away to create a widening of the recess. Examiner notes the claim does not specifically define how the lip of the flange is outwardly turned other than the lip defining a widening of the recess, which is taught by Ruff et al.

The recess of Ruff et al. is capable of allowing passage of a suitably dimensioned spacer element, wherein the recess deforms the flanges and causes the inwardly directed teeth to engage the spacer element. Note that any solid material would inherently be able to elastically/plastically deform to certain degree before failure.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

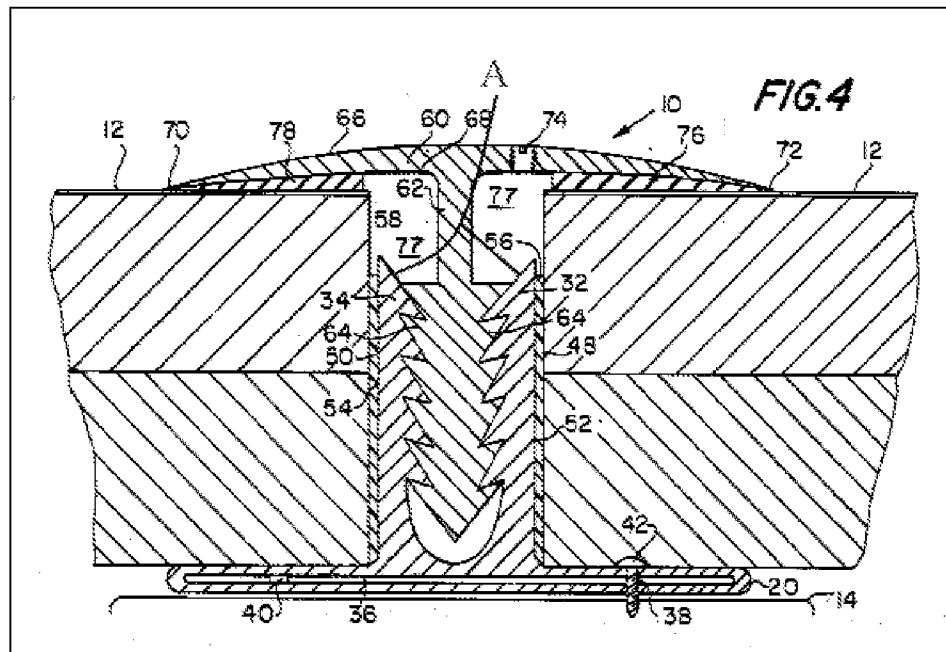


Fig. 4: Ruff et al. (US 4,067,155)

With regard to claim 61: Ruff et al. further discloses the width of the head (20) is substantially greater than the spacing of the flanges (22, 24) on the central portion of the head (figs. 1 and 3-4).

With regard to claim 62: Ruff et al. further disclose the width of the head (20) is approximately seven times the spacing between the flanges (22, 24) (fig. 4)

With regard to claim 63: The flanges (22, 24) of Ruff et al. are resiliently deformable as they are made of an extruded thermoplastic material, which is the same resilient material as the cap member (col. 3, lines 3-14). The flanges of Ruff et al. are capable of being resiliently deformable outwardly by passage of the spacer element to thereby engage the spacer element by compressive contact with the teeth

With regard to claim 64: Ruff further discloses the cross sectional configuration, formed by the strip and the pair of flanges is substantially T-shaped (fig. 1).

Art Unit: 3633

With regard to claim 65: Ruff further discloses two or more teeth extending longitudinally along each flange (52, 54) inside the recess (figs. 1).

With regard to claim 67: Ruff et al. further discloses the head, flanges and teeth are formed integrally as an extrusion (col. 3, lines 12-14). Note that head, flanges and teeth being formed from extrusion is considered product by process.

Determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. MPEP 2113.

With regard to claim 68: Ruff et al. further discloses a building panel (14) containing the stud (16) according to claim 60 (figs. 3-4).

With regard to claim 74: Ruff et al. further discloses the out-turned terminal lips (A) define a lead-in path for aligning a tongue of the spacer element.

With regard to claim 76: Ruff et al. further discloses each flange (22, 24) has a base directly connected to the head (20) and each flange (22, 24) extends directly away from the head (20).

### ***Allowable Subject Matter***

Claims 69-73 and 77-80 are allowed.

### ***Response to Arguments***

Art Unit: 3633

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSIE FONSECA whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571)272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F./

Examiner, Art Unit 3633



Application/Control Number: 10/568,787

Page 8

Art Unit: 3633

/Robert J Canfield/

for D. Dunn, SPE of Art Unit 3633